

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street Sacramento, California 95814 and Seaside Transportation (hereinafter STS), 389 Terminal Way, Terminal Island, California 90731

**I. RECITALS**

- (1) From January 10, 2010 through October 20, 2010, STS acquired and used non-California certified engines in the Rubber Tire Gantry (RTG) cranes at its above-referenced business location in violation of Title 13, Sections 2420 and 2423 of the California Code of Regulations. Prior to using them, STS failed to verify that the engines were certified for use in California.
- (2) California Code of Regulations, Title 13, Sections 2420(a)(1) and (a)(3) provide that this article shall be applicable to new heavy-duty off-road compression-ignition engines, including all heavy-duty off-road alternate-fueled compression-ignition engines, including those engines derived from existing diesel cycle engines (hereinafter all such engines shall be referred to as compression-ignition engines), produced on or after January 1, 1996, and all other new 2000 model year and later off-road compression-ignition engines, with the exception of all engines and equipment that fall within the scope of the preemption of Section 209(e)(1) of the Federal Clean Air Act (42 U.S.C. 7543(e)(1) and as defined by regulation of the U.S. Environmental Protection Agency. Every new off-road compression-ignition engine that is manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, is required to be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order, issued pursuant to Chapter 9, Article 4, Section 2423.
- (3) California Health and Safety Code section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500) per vehicle. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
- (4) STS admits the facts alleged above in paragraphs (1) and (2) of the Recitals, but is entering into this Agreement for the purpose of settlement

and resolution of this matter with ARB. The Parties wish to avoid the burden, costs and uncertainties of litigation, and by and through this Agreement, the Parties seek to fully and finally settle any and all existing claims associated with the violations described in this Agreement.

## II. TERMS AND CONDITIONS

- (1) In consideration of ARB not filing a legal action for the violations referred to above, ARB and STS agree as follows:

STS shall pay the sum of Five Thousand, Five Hundred Dollars (\$5,500), to the California Air Pollution Control Fund. The full payment is due immediately and shall be payable to the California Air Pollution Control Fund and addressed to:

Martina Diaz  
Air Resources Board  
Enforcement Division  
Mobile Source Enforcement Section  
9528 Telstar Avenue  
El Monte, California 91731

- (2) STS represents that it understands the legal requirements applicable to the non-certified engines in California and agrees that it will come to compliance with the in-use Cargo Handling Equipment regulations (Title 13, Section 2479).

### **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

### **The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per vehicle penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is approximately \$5,500 per vehicle for approximately eleven (11) vehicles.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is section 43016 because STS used non-certified engines in California in violation of Title 13, sections 2420-2427 of California Code of Regulations. Since there is no penalty specifically provided for such violations, Health and Safety Code section 43016 applies.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The provisions cited above do not prohibit emissions above a specified level. However, since the vehicles were not certified for sale in California, emissions attributable to them are illegal. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available.

- (2) STS acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (3) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty was based in part on confidential financial information or confidential business information provided by STS that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and STS that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and STS and reflects ARB's assessment of the relative strength of its case against STS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that STS may have secured from its actions.

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- (5) STS represents that it understands the legal requirements applicable to using uncertified engines in California.

California Air Resources Board

Seaside Transportation Services, LLC

By: 

Name: James R. Ryden

Title: Division Chief  
Enforcement

By: 

Name: Geoffrey Romano

Title: Equipment Maintenance Manager

Date: 3/3/11

Date: 2-17-2011